

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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JULIE SHERIDAN,

Plaintiff,

v.

CAESARS ENTERPRISE SERVICES LLC,

Defendant.

Case No. 2:20-cv-00126-APG-DJA

**ORDER**

This matter is before the Court on Defendant's Motion to Strike (ECF No. 34), filed on December 18, 2020. The Court also considered Plaintiff's Response (ECF No. 35), filed on December 30, 2020 and Defendant's Reply (ECF No. 37), filed on January 5, 2021. The Court finds this matter properly resolved without a hearing. LR 78-1.

Defendant seeks to strike Plaintiff's Errata Sheet because it violates Federal Rule of Civil Procedure 30(e) as it seeks to make substantive changes and additions to her sworn deposition testimony rather than clarify stenographic mistakes. (ECF No. 34). Plaintiff was deposed on October 21, 2020. On December 3, 2020, Plaintiff, through her counsel, submitted an Errata Sheet containing two changes to her deposition listing the reason for the change as "[c]larify response." (ECF No. 34, p. 3-4). More specifically, she adds significant alleged damages in specific amounts. Defendant contends that by doing this, Plaintiff is attempting to create a material issue of disputed fact regarding her alleged breach of contract claim. Accordingly, Defendant argues that the Errata Sheet should be stricken as attempting to make substantive changes rather than a corrective change in violation of Rule 30.

Plaintiff responds that the changes she made were consistent with the damage calculation in her Initial Disclosures. (ECF No. 35). She argues that the changes were minor and made to make the deposition testimony consistent with her damage calculation. Plaintiff disagrees with

1 Defendant's contention that she is trying to avoid summary judgment and there is no prejudice to  
2 Defendant in permitting the changes.

3 Defendant replies that the two errata lines were used to alter one response by Plaintiff  
4 during her October 21, 2020 deposition testimony. (ECF No. 37). It contends that the change is  
5 "lawyerly fixing" as it contains a hypothetical and legal conclusion. Defendant also claims that  
6 the substantive change to the damage amounts is not an error attributed to the court reporter. In  
7 total, Defendant argues that Plaintiff's two lines in the Errata contain at least 15 substantive  
8 changes to the deposition testimony.

9 Rule 30 provides that, "[o]n request by the deponent or a party before the deposition is  
10 completed, the deponent must be allowed 30 days after being notified by the officer that the  
11 transcript or recording is available in which: (A) to review the transcript of recording; and (B) if  
12 there are changes in form or substance, to sign a statement listing the changes and the reasons for  
13 making them." Fed.R.Civ.P. 30(e)(1). Although the text of Rule 30(e) provides that changes  
14 may be "in form or substance" and indicates that "reasons" must be identified for making those  
15 changes, the Rule itself does not address the proper scope of changes allowed and the types of  
16 reasons that are sufficient to make changes.

17 As such, the Court looks to guidance from the Ninth Circuit. The Ninth Circuit has  
18 interpreted the scope of this Rule by finding that "while the language of FRCP 30(e) permits  
19 corrections 'in form or substance,' this permission does not properly include changes offered  
20 solely to create a material factual dispute in a tactical attempt to evade an unfavorable summary  
21 judgment." *Hambleton Bros. Lumber Co. v. Balkin Enterprises, Inc.*, 397 F.3d 1217 (9th Cir.  
22 2005). The Ninth Circuit then articulated a standard, indicating that Rule 30(e) changes are "to  
23 be used for corrective, and not contradictory, changes." *Id.* at 1226.

24 Further, this District Court has also addressed this issue previously. Judge Koppe, applied  
25 *Hambleton* to find that Rule 30(e) changes (1) must have a legitimate purpose, (2) must not be  
26 used as a sham solely to create a material issue of fact to evade summary judgment, and (3) must  
27 not be used to alter what was actually said under oath. *Ashcraft v. Welk Resort Group Corp.*,  
28 2017 WL 5180421, at \*3 (D. Nev. Nov. 8, 2017). Also, Judge Koppe summarized district court

1 decisions into three groups: (1) Rule 30(e) changes are improper if used in a manner akin to a  
2 sham affidavit designed to avoid summary judgment; (2) Rule 30(e) changes are improper if used  
3 to alter the substance of deposition testimony in a contradictory manner except when correcting  
4 transcription errors; (3) Rule 30(e) changes are improper if used in either a sham manner or  
5 contradicting the testimony actually given.

6 The Court agrees with Defendant that Plaintiff's Errata Sheet should be stricken as  
7 violative of Rule 30(e). It is a transparent attempt by Plaintiff's counsel to repair what is assumed  
8 to be damaging deposition testimony. Even the phrasing of the clarifications does not reflect  
9 Plaintiff's own voice or words compared to the deposition testimony. While Plaintiff may be able  
10 to submit a declaration at the summary judgment stage or her counsel could make these legal  
11 arguments in a dispositive motion brief, they are not appropriate changes to her deposition  
12 transcript. *See, e.g., In re Cathode Ray Tube Antitrust Litigation*, 2014 WL 12647874, at \*2  
13 (N.D. Cal. Dec. 12, 2014) (a deponent remains able to file an affidavit that contradicts her  
14 deposition testimony in conjunction with summary judgment proceedings, may testify at trial in a  
15 manner that contradicts her deposition testimony, and may otherwise contradict her deposition  
16 testimony in future proceedings). Plaintiff's counsel may regret not properly preparing her for  
17 her deposition, but this is clear post-hoc coaching that is not permitted by Rule 30. Rule 30(e)  
18 cannot be used to alter the testimony that was actually given at the deposition and the Court finds  
19 that Plaintiff's two additions are so substantive and clearly add significant new information to her  
20 testimony as to be improper. They are contradictory rather than simple corrective changes for  
21 stenographic mistakes.

22 Accordingly, the Court must uphold Rule 30(e) so that it is not utilized to circumvent  
23 well-established discovery rules. Relevant to this circumstance are two important reminders: a  
24 deposition differs from interrogatory answers and an attorney is precluded from coaching a  
25 witness during the depositions. *See, e.g., In re Stratosphere Corp. Securities Litig.*, 182 F.R.D.  
26 614, 621 (D. Nev. 1998). Allowing a deponent to alter testimony through after-the-fact changes  
27 (potentially in consultation with her attorney) would undermine these well-settled deposition  
28 rules, effectively permitting the substitution of interrogatory answers for deposition testimony and

1 permitting attorneys to alter the deponent's testimony. Indeed, Plaintiff's counsel argues that the  
2 changes are consistent with her Initial Disclosures. However, what is clear is that both her Initial  
3 Disclosures damages calculation and the Errata Sheet were written by Plaintiff's counsel. The  
4 deposition is Plaintiff's testimony – not coaching or writing by counsel – and thus, the additions  
5 in the Errata Sheet are not permissible.

6 IT IS THEREFORE ORDERED that Defendant's Motion to Strike (ECF No. 34) is  
7 **granted.**

8 DATED: January 27, 2021.



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DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE